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BEFORE THE
Federal Communications Commission
WASHINGTON, D. C. 20554

DEC 17 1997

FCC MAIL ROOM

In re)
)
Amendment of 47 C.F.R. §73.202(b)) MM Docket No. 97-168
FM Table of Allotments) RM-9103
(Arcadia, Missouri; Carbondale) RM-9182
and Steeleville, Illinois;)
Marble Hill and Ellington,)
Missouri; Tiptonville,)
Tennessee))

TO: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS ON COUNTERPROPOSAL

Iron County Broadcasting Company (ICBC), by its attorney, and pursuant to the **Public Notice, "Office of Public Affairs, Reference Operations Division, Petitions for Rulemaking Filed, Report No. 2239"**, released November 26, 1997, hereby respectfully submits its Reply Comments on the "Comments and Counterproposal" of Lyle Broadcasting Corporation (Lyle), which advances four alternative proposals, all of which seek an upgrade to Class C1 status of the present facilities of Class B FM Broadcast Station WCIL-FM, Carbondale, Illinois. In so doing, the following is shown:

Lyle's Option 1

1. Lyle's "Option 1" requires (1) the imposition of a site restriction on the allocation of Channel 267C3 at

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Tiptonville, Tennessee, (2) the changing of the channel number at Marble Hill, Missouri from 247A to 228A, and (3) the allocation of Channel 247A at Arcadia, Missouri in lieu of Channel 269A as proposed by ICBC and the **Notice of Proposed Rulemaking** in this proceeding.

2. At the outset, Lyle's "Counterproposal" is untimely as it regards any change in or condition upon the Tiptonville allocation. The Tiptonville allocation is currently the subject of a channel allocation proceeding pending before the Policy and Rules Division, MM Docket No. 96-204. Counterproposals were due to be filed in that case on November 25, 1996, and reply comments were due to be filed therein on February 18, 1997. "Statements of Interest" in the retention of Channel 267C3 at Tiptonville were timely filed by two parties, Twin States Broadcasting, Inc. and Terry Hailey. Neither of those parties requested a site restriction or other imposition or lessening of the Class C3 status of Channel 267C3 at Tiptonville.

3. It was therefore incumbent upon Lyle to have advanced its site-restriction proposal for Tiptonville in a timely manner in MM Docket No. 96-204. **FM Table of Allotments, Grenada, Artesia and Okolona, Mississippi**, 7 FCC Rcd 4838 (M. M. Bur., 1992). Having failed to do so on or before the final day for counterproposals in MM Docket No. 96-204, Lyle should not be allowed to "bootstrap" such a

proposal to ICBC's procedurally correct Petition for the allocation of Channel 269A at Arcadia.

4. Lyle's Option 1 is also procedurally defective in that it fails to contain a statement that it will reimburse Dana R. Withers, permittee of a new FM Broadcast Station on Channel 247A at Marble Hill, Missouri, for her reasonable and prudent expenses per **FM Table of Allocations, Circleville, Ohio**, 9 RR 2d 1579 (1966), in the event that her station commences operations on Channel 247A prior to the ultimate resolution of this proceeding, and this station is required to move to a different channel. This is a real possibility, since it is the undersigned's understanding that this station is to commence broadcasting on or before June 1, 1997. Without such a statement, Lyle's counterproposal seeking Option 1 is fatally defective. **FM Table of Allocations, Hiawatha, Manhattan and Ogden, Kansas**, 5 FCC Rcd 49 (1989).

Lyle's Option 2

5. Lyle's Option 2 suffers from the same problem as Option 1 with respect to its need for a site restriction on Channel 267C3. Again, Lyle's request was filed about 10 months too late.

6. Option 2 calls for the changing of the channel number at Ellington, Missouri from 280A to 294A and for the changing of the proposed channel number at Arcadia from 269A

to 280A. As the Ellington permittee (New Life Evangelistic Center, Inc.) has filed separately a "Petition for Rulemaking" seeking the substitution of Channel 294A for Channel 280A at Ellington, Option 2 would logically be preferred over Option 1 in that it would not require a channel change at Marble Hill. However, because of the Tiptonville problem, Option 2 is procedurally defective because it is untimely.

Lyle's Options 3 and 4

8. Lyle's options 3 and 4 involve the reallocation of Channel 268 from Carbondale, Illinois to Steeleville, Illinois. No substitute commercial FM channel is proposed to be allocated by Lyle to Carbondale, and thus, were Lyle's Option 3 or Option 4 to be adopted, Carbondale would be without a full-time commercial broadcast station. Lyle's co-owned AM station, WCIL, operates on 1020 kHz and, upon information and belief, must sign-off at dusk in order to protect the dominant "clear channel" station on 1020 kHz, KDKA(AM), Pittsburgh, Pennsylvania. The other stations in Carbondale, WDBX(FM) and WSIU(FM), are both non-commercial educational stations affiliated with Southern Illinois University, and do not serve the needs of advertisers in Carbondale.

9. Lyle's proposal is an attempt to move WCIL-FM out of Carbondale and into the state of Missouri. The

Commission must determine whether this comports with Section 307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b), which requires broadcast frequencies to be distributed in a "fair, efficient and equitable" manner among the "states and communities".

10. Carbondale had a 1990 Census population of 27,033. It is a regionally important city because of its status as the home of Southern Illinois University, a large regional public university. Lyle proposes to move WCIL-FM under Options 3 and 4 to Steeleville, Illinois, which had a 1990 Census population of 2,059. Lyle euphemistically calls Steeleville a "banking town" (Counterproposal at 6), although any town with a bank branch could be called a "banking town".

11. Logic dictates that a "fair, efficient and equitable" distribution of broadcast facilities does not take place when the only commercial FM station (and only full-time commercial broadcast station) in a city of 27,033 persons is removed to a small town of 2,059 persons. Therefore, the Commission would be in violation of 47 U.S.C. §307(b) were it to permit the reallocation of Channel 268B from Carbondale to Steeleville.

Conclusion


12. Lyle's Options 1 and 2 are procedurally defective, in that (1) Lyle's counterproposal was not timely filed in

connection with the final day for counterproposals in Docket 96-204 and (2) Lyle failed to make a statement that it would reimburse the Marble Hill, Missouri permittee for her reasonable and prudent expenses incurred in changing frequencies in the event her station goes on the air prior to the resolution of this proceeding. Lyle's Options 3 and 4 are statutorily defective, in that the removal of Channel 268B from Carbondale, Illinois to Steeleville, Illinois would violate Section 307(b) of the Communications Act of 1934, as amended.

WHEREFORE, it is urged that the Commission dismiss or deny the "Comments and Counterproposal" filed by Lyle Broadcasting Corporation, and that the Commission allocate Channel 269A to Arcadia, Missouri.

Respectfully submitted,

**IRON COUNTY BROADCASTING
COMPANY**

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CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing "Reply Comments on Counterproposal" will have been served by first-class United States mail, postage prepaid, on the 11th day of December, 1997, upon the following:

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